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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2003 Assembly Bill 279</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published: September 26, 2003</i> <i>Contact: Don Salm, Senior Staff Attorney (266-8540)</i>	

The bill and Substitute Amendment 1 provide that, if a court finds by a preponderance of the evidence that a parent has engaged in a pattern of or serious incident of spousal abuse, there is a rebuttable presumption that it is detrimental to the child and contrary to the child's best interest for that parent to have either sole or joint legal custody of the child. The substitute amendment makes the following changes in the bill:

**Guardian Ad Litem (GAL)**

Under the bill and Substitute Amendment 1, the GAL is required to investigate whether there is evidence that either party has engaged in interspousal battery or domestic abuse and must report to the court on the results of the investigation.

The **substitute amendment** deletes a provision in the bill requiring the GAL, if he or she finds evidence of such battery or abuse, to **make recommendations** to the court addressing the safety and well-being of the child and the victim of the battery and abuse.

**Mediator to Inquire About Domestic Abuse to Determine if Mediation Should Be Terminated**

Under **current law**, the initial mediation session must be a screening and evaluation session to determine whether mediation is appropriate.

Under the **bill**, before the initial session, the mediator, for the purpose of determining whether mediation should be terminated, is required to inquire of each party, outside the presence of the other party, whether each of the parties has engaged in interspousal battery or domestic abuse.

The **substitute amendment**: (1) **deletes** that provision in the bill and specifies that this initial session (which is a screening and evaluation session), must include **screening for domestic abuse**; and (2) **adds** a provision that any **intake form** that the family court counseling services requires the parties to complete before the commencement of mediation shall ask each party whether either of the

parties has engaged in interspousal battery or domestic abuse.

**Mental and Physical Health of Persons in Proposed Household**

Under **current law**, one of the factors that a court must consider when awarding legal custody and physical placement is the mental and physical health of the persons living in the proposed custodial household.

The **bill** adds the following to the list of factors in current law that the court must consider when awarding legal custody and physical placement: consideration of whether a parent or other person living in a proposed custodial household **has a mental or physical impairment that negatively affects the child's intellectual, physical, or emotional well-being**.

The **substitute amendment** deletes the provision in the bill and amends the provision in current law, noted above, to modify the "mental and physical health" factor by requiring the court to consider **"whether the mental and physical health of the persons living in a proposed household negatively impacts the child's intellectual, physical or emotional well-being."**

**Presumption: Determination of "Primary Physical Aggressor"**

Under the **bill**, if the court finds that both parties have engaged in a pattern of or serious incident of spousal abuse, for purposes of the new presumption created in the bill, the court must attempt to determine which party was the **primary physical aggressor**.

The **substitute amendment** adds provisions: (1) specifying that if one, but not both, of the parties was convicted of a crime that was an act of domestic abuse, the court must find the party who was convicted to be the primary physical aggressor; and (2) if the court determines that neither party was the primary physical aggressor, the new presumption in the bill and the substitute amendment against sole or joint legal custody where there is evidence of spousal abuse **does not** apply.

The **substitute amendment** also slightly changes one of the factors (set forth in the bill) that the court must consider in determining who is the primary physical aggressor: "All prior acts of domestic violence between the parties" becomes "Prior acts of domestic violence between the parties" (i.e., "All" is deleted).

**Legislative History**

On September 18, 2003, the Assembly Committee on Family Law voted to recommend passage of Assembly Bill 279, as amended by Assembly Substitute Amendment 1 (which was adopted on a vote of Ayes, 6; Noes, 0), on a vote of Ayes, 6; Noes, 0.

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